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AMENDED IN SENATE APRIL 4, 2017
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AMENDED IN SENATE MARCH 9, 2017
AMENDED IN SENATE FEBRUARY 21, 2017

SENATE BILL

No. 35

Introduced by Senator Wiener

(Principal coauthor: Senator Atkins)

(Coauthors: Senators Allen and Vidak)

~~(Coauthor: Assembly Member Caballero)~~

*(Coauthors: Assembly Members Caballero, Dahle, Gloria, Grayson,
and Santiago)*

December 5, 2016

An act to amend Sections 65400 and 65582.1 of, and to add *and repeal* Section 65913.4 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 35, as amended, Wiener. Planning and zoning: affordable housing: streamlined approval process.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. The Planning and

Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs. *Existing law requires the housing element portion of the annual report to be prepared through the use of forms and definitions adopted by the department pursuant to the Administrative Procedure Act.*

This bill would *require the housing element portion of the annual report to be prepared through the use of standards, forms, and definitions adopted by the department. The bill would eliminate the requirement that the forms and definitions be adopted by the department pursuant to the Administrative Procedure Act and would instead authorize the department to review, adopt, amend, and repeal the standards, forms, or definitions, as provided. The bill would also require the planning agency to include in its annual report specified information regarding units of net new housing, including rental housing and housing designated for home ownership, for-sale housing that have been issued an a completed entitlement, building permit, or certificate of occupancy. The bill would also require the Department of Housing and Community Development to post an annual report submitted pursuant to the requirement described above on its Internet Web site, as provided.*

(2) Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This bill would authorize a development proponent to submit an application for a multifamily housing development ~~that~~ *which* satisfies specified planning objective ~~standards~~ *standards*, is subject to a streamlined, ministerial approval process, as provided, and ~~not be~~ subject to a conditional use permit. The bill would require a local government to notify the development proponent in writing if the local government determines that the development conflicts with any of those objective standards by a specified time; otherwise, the development is deemed

to comply with those standards. The bill would limit the authority of a local government to impose parking standards or requirements on a streamlined development approved pursuant to these provisions, as provided. The bill would provide that if a local government approves a project pursuant to that process, that approval will not expire if that project includes investment in housing affordability, and would otherwise provide that the approval of a project expire automatically after 3 years, unless that project qualifies for a one-time, one-year extension of that approval. *The bill would provide that approval pursuant to its provisions would remain valid for three years and remain valid thereafter so long as vertical construction of the development has begun and is in progress, and would authorize a discretionary one-year extension, as provided.* The bill would prohibit a local government from adopting any requirement that applies to a project solely or partially on the basis that the project receives ministerial or streamlined approval pursuant to these provisions. *The bill would repeal these provisions as of January 1, 2026.*

(3) The bill would make findings that ensuring access to affordable housing is a matter of statewide concern and declare that its provisions would apply to all cities and counties, including a charter city, a charter county, or a charter city and county.

(4) By imposing new duties upon local agencies with respect to the streamlined approval process and reporting requirement described above, this bill would impose a state-mandated local program.

~~(5) The~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would incorporate additional changes to Section 65400 of the Government Code proposed by AB 879 to be operative only if this bill and AB 879 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 65582.1 of the Government Code proposed by AB 73 to be operative only if this bill and AB 73 are enacted and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65400 of the Government Code is
2 amended to read:

3 65400. (a) After the legislative body has adopted all or part
4 of a general plan, the planning agency shall do both of the
5 following:

6 (1) Investigate and make recommendations to the legislative
7 body regarding reasonable and practical means for implementing
8 the general plan or element of the general plan, so that it will serve
9 as an effective guide for orderly growth and development,
10 preservation and conservation of open-space land and natural
11 resources, and the efficient expenditure of public funds relating to
12 the subjects addressed in the general plan.

13 (2) Provide by April 1 of each year an annual report to the
14 legislative body, the Office of Planning and Research, and the
15 Department of Housing and Community Development that includes
16 all of the following:

17 (A) The status of the plan and progress in its implementation.

18 (B) The progress in meeting its share of regional housing needs
19 determined pursuant to Section 65584 and local efforts to remove
20 governmental constraints to the maintenance, improvement, and
21 development of housing pursuant to paragraph (3) of subdivision
22 (c) of Section 65583.

23 The housing element portion of the annual report, as required
24 by this paragraph, shall be prepared through the use of ~~forms~~
25 *standards, forms, and definitions* adopted by the Department of
26 Housing and Community Development pursuant to the rulemaking
27 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~
28 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
29 ~~2):~~ *Development. The department may review, adopt, amend, and*
30 *repeal the standards, forms, or definitions, to implement this*
31 *article. Any standards, forms, or definitions adopted to implement*
32 *this article shall not be subject to Chapter 3.5 (commencing with*
33 *Section 11340) or Part 1 of Division 3 of Title 2.* Before and after
34 adoption of the forms, the housing element portion of the annual
35 report shall include a section that describes the actions taken by
36 the local government towards completion of the programs and
37 status of the local government's compliance with the deadlines in
38 its housing element. That report shall be considered at an annual

1 public meeting before the legislative body where members of the
2 public shall be allowed to provide oral testimony and written
3 comments.

4 The report may include the number of units that have been
5 substantially rehabilitated, converted from nonaffordable to
6 affordable by acquisition, and preserved consistent with the
7 standards set forth in paragraph (2) of subdivision (c) of Section
8 65583.1. The report shall document how the units meet the
9 standards set forth in that subdivision.

10 (C) The degree to which its approved general plan complies
11 with the guidelines developed and adopted pursuant to Section
12 65040.2 and the date of the last revision to the general plan.

13 (D) The number of net new units of housing, including both
14 rental housing and ~~housing designated for home ownership, for-sale~~
15 ~~housing~~, that have been issued ~~an a completed~~ entitlement, a
16 building permit, or a certificate of occupancy, thus far in the
17 housing element cycle, and the income category, by area median
18 income category, that each unit of housing, including both rental
19 housing and housing designated for home ownership, satisfies.
20 That *production* report shall, for each income category described
21 in this subparagraph, distinguish between the number of rental
22 housing units ~~that satisfy each income category~~ and the number
23 of *for-sale housing* units ~~that are housing designated for home~~
24 ~~ownership~~ that satisfy each income category. The *production* report
25 shall include, for each entitlement, building permit, or certificate
26 of occupancy, a unique site identifier, ~~such as street address, ZIP~~
27 ~~Code, or assessor's parcel number.~~ *which must include an*
28 *assessor's parcel number, but may also include street address or*
29 *other identifiers.*

30 (E) *The number of applications submitted pursuant to*
31 *subdivision (a) of Section 65913.4, the location and the total*
32 *number of developments approved pursuant to subdivision (b) of*
33 *Section 65913.4, the total number of building permits issued*
34 *pursuant to subdivision (b) of Section 65913.4, the total number*
35 *of units including both rental housing and for-sale housing by area*
36 *median income category constructed using the process provided*
37 *for in subdivision (b) of Section 65913.4.*

38 (E)

1 (F) The Department of Housing and Community Development
2 shall post a report submitted pursuant to this paragraph on its
3 Internet Web site within a reasonable time of receiving the report.

4 (b) If a court finds, upon a motion to that effect, that a city,
5 county, or city and county failed to submit, within 60 days of the
6 deadline established in this section, the housing element portion
7 of the report required pursuant to subparagraph (B) of paragraph
8 (2) of subdivision (a) that substantially complies with the
9 requirements of this section, the court shall issue an order or
10 judgment compelling compliance with this section within 60 days.
11 If the city, county, or city and county fails to comply with the
12 court's order within 60 days, the plaintiff or petitioner may move
13 for sanctions, and the court may, upon that motion, grant
14 appropriate sanctions. The court shall retain jurisdiction to ensure
15 that its order or judgment is carried out. If the court determines
16 that its order or judgment is not carried out within 60 days, the
17 court may issue further orders as provided by law to ensure that
18 the purposes and policies of this section are fulfilled. This
19 subdivision applies to proceedings initiated on or after the first
20 day of October following the adoption of forms and definitions by
21 the Department of Housing and Community Development pursuant
22 to paragraph (2) of subdivision (a), but no sooner than six months
23 following that adoption.

24 *SEC. 1.5. Section 65400 of the Government Code is amended*
25 *to read:*

26 65400. (a) After the legislative body has adopted all or part
27 of a general plan, the planning agency shall do both of the
28 following:

29 (1) Investigate and make recommendations to the legislative
30 body regarding reasonable and practical means for implementing
31 the general plan or element of the general plan, so that it will serve
32 as an effective guide for orderly growth and development,
33 preservation and conservation of open-space land and natural
34 resources, and the efficient expenditure of public funds relating to
35 the subjects addressed in the general plan.

36 (2) Provide by April 1 of each year an annual report to the
37 legislative body, the Office of Planning and Research, and the
38 Department of Housing and Community Development that includes
39 all of the following:

40 (A) The status of the plan and progress in its implementation.

1 (B) The progress in meeting its share of regional housing needs
2 determined pursuant to Section 65584 and local efforts to remove
3 governmental constraints to the maintenance, improvement, and
4 development of housing pursuant to paragraph (3) of subdivision
5 (c) of Section 65583.

6 The housing element portion of the annual report, as required
7 by this paragraph, shall be prepared through the use of ~~forms~~
8 *standards, forms, and definitions* adopted by the Department of
9 Housing and Community Development pursuant to the rulemaking
10 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~
11 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
12 ~~2). Prior to Development. The department may review, adopt,~~
13 ~~amend, and repeal the standards, forms, or definitions, to~~
14 ~~implement this article. Any standards, forms, or definitions adopted~~
15 ~~to implement this article shall not be subject to Chapter 3.5~~
16 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
17 ~~2. Before and after adoption of the forms, the housing element~~
18 ~~portion of the annual report shall include a section that describes~~
19 ~~the actions taken by the local government towards completion of~~
20 ~~the programs and status of the local government's compliance with~~
21 ~~the deadlines in its housing element. That report shall be considered~~
22 ~~at an annual public meeting before the legislative body where~~
23 ~~members of the public shall be allowed to provide oral testimony~~
24 ~~and written comments.~~

25 The report may include the number of units that have been
26 substantially rehabilitated, converted from nonaffordable to
27 affordable by acquisition, and preserved consistent with the
28 standards set forth in paragraph (2) of subdivision (c) of Section
29 65583.1. The report shall document how the units meet the
30 standards set forth in that subdivision.

31 *(C) The number of housing development applications received*
32 *in the prior year.*

33 *(D) The number of units included in all development*
34 *applications in the prior year.*

35 *(E) The number of units approved and disapproved in the prior*
36 *year.*

37 ~~(E)~~

38 *(F) The degree to which its approved general plan complies*
39 *with the guidelines developed and adopted pursuant to Section*
40 *65040.2 and the date of the last revision to the general plan.*

1 (G) A listing of sites rezoned to accommodate that portion of
2 the city's or county's share of the regional housing need for each
3 income level that could not be accommodated on sites identified
4 in the inventory required by paragraph (1) of subdivision (c) of
5 Sections 65583 and 65584.09. The listing of sites shall also include
6 any additional sites that may have been required to be identified
7 by Section 65863.

8 (H) The number of net new units of housing, including both
9 rental housing and for-sale housing, that have been issued a
10 completed entitlement, a building permit, or a certificate of
11 occupancy, thus far in the housing element cycle, and the income
12 category, by area median income category, that each unit of
13 housing satisfies. That production report shall, for each income
14 category described in this subparagraph, distinguish between the
15 number of rental housing units and the number of for-sale units
16 that satisfy each income category. The production report shall
17 include, for each entitlement, building permit, or certificate of
18 occupancy, a unique site identifier which must include the
19 assessor's parcel number, but may include street address, or other
20 identifiers.

21 (I) The number of applications submitted pursuant to subdivision
22 (a) of Section 65913.4, the location and the total number of
23 developments approved pursuant to subdivision (b) of Section
24 65913.4, the total number of building permits issued pursuant to
25 subdivision (b) of Section 65913.4, the total number of units
26 including both rental housing and for-sale housing by area median
27 income category constructed using the process provided for in
28 subdivision (b) of Section 65913.4.

29 (J) The Department of Housing and Community Development
30 shall post a report submitted pursuant to this paragraph on its
31 Internet Web site within a reasonable time of receiving the report.

32 (b) If a court finds, upon a motion to that effect, that a city,
33 county, or city and county failed to submit, within 60 days of the
34 deadline established in this section, the housing element portion
35 of the report required pursuant to subparagraph (B) of paragraph
36 (2) of subdivision (a) that substantially complies with the
37 requirements of this section, the court shall issue an order or
38 judgment compelling compliance with this section within 60 days.
39 If the city, county, or city and county fails to comply with the
40 court's order within 60 days, the plaintiff or petitioner may move

1 for sanctions, and the court may, upon that motion, grant
2 appropriate sanctions. The court shall retain jurisdiction to ensure
3 that its order or judgment is carried out. If the court determines
4 that its order or judgment is not carried out within 60 days, the
5 court may issue further orders as provided by law to ensure that
6 the purposes and policies of this section are fulfilled. This
7 subdivision applies to proceedings initiated on or after the first
8 day of October following the adoption of forms and definitions by
9 the Department of Housing and Community Development pursuant
10 to paragraph (2) of subdivision (a), but no sooner than six months
11 following that adoption.

12 SEC. 2. Section 65582.1 of the Government Code is amended
13 to read:

14 65582.1. The Legislature finds and declares that it has provided
15 reforms and incentives to facilitate and expedite the approval and
16 construction of affordable housing. Those reforms and incentives
17 can be found in the following provisions:

18 (a) Housing element law (Article 10.6 (commencing with
19 Section 65580) of Chapter 3).

20 (b) Extension of statute of limitations in actions challenging the
21 housing element and brought in support of affordable housing
22 (subdivision (d) of Section 65009).

23 (c) Restrictions on disapproval of housing developments
24 (Section 65589.5).

25 (d) Priority for affordable housing in the allocation of water and
26 sewer hookups (Section 65589.7).

27 (e) Least cost zoning law (Section 65913.1).

28 (f) Density bonus law (Section 65915).

29 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).

30 (h) By-right housing, in which certain multifamily housing are
31 designated a permitted use (Section 65589.4).

32 (i) No-net-loss-in zoning density law limiting downzonings and
33 density reductions (Section 65863).

34 (j) Requiring persons who sue to halt affordable housing to pay
35 attorney fees (Section 65914) or post a bond (Section 529.2 of the
36 Code of Civil Procedure).

37 (k) Reduced time for action on affordable housing applications
38 under the approval of development permits process (Article 5
39 (commencing with Section 65950) of Chapter 4.5).

- 1 (l) Limiting moratoriums on multifamily housing (Section
2 65858).
- 3 (m) Prohibiting discrimination against affordable housing
4 (Section 65008).
- 5 (n) California Fair Employment and Housing Act (Part 2.8
6 commencing with Section 12900) of Division 3).
- 7 (o) Community redevelopment law (Part 1 (commencing with
8 Section 33000) of Division 24 of the Health and Safety Code, and
9 in particular Sections 33334.2 and 33413).
- 10 (p) Streamlining housing approvals during a housing shortage
11 (Section 65913.4).
- 12 *SEC. 2.5. Section 65582.1 of the Government Code is amended*
13 *to read:*
- 14 65582.1. The Legislature finds and declares that it has provided
15 reforms and incentives to facilitate and expedite the construction
16 of affordable housing. Those reforms and incentives can be found
17 in the following provisions:
- 18 (a) Housing element law (Article 10.6 (commencing with
19 Section 65580) of Chapter 3).
- 20 (b) Extension of statute of limitations in actions challenging the
21 housing element and brought in support of affordable housing
22 (subdivision (d) of Section 65009).
- 23 (c) Restrictions on disapproval of housing developments
24 (Section 65589.5).
- 25 (d) Priority for affordable housing in the allocation of water and
26 sewer hookups (Section 65589.7).
- 27 (e) Least cost zoning law (Section 65913.1).
- 28 (f) Density bonus law (Section 65915).
- 29 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
- 30 (h) By-right housing, in which certain multifamily housing are
31 designated a permitted use (Section 65589.4).
- 32 (i) No-net-loss-in zoning density law limiting downzonings and
33 density reductions (Section 65863).
- 34 (j) Requiring persons who sue to halt affordable housing to pay
35 attorney fees (Section 65914) or post a bond (Section 529.2 of the
36 Code of Civil Procedure).
- 37 (k) Reduced time for action on affordable housing applications
38 under the approval of development permits process (Article 5
39 (commencing with Section 65950) of Chapter 4.5).

1 (l) Limiting moratoriums on multifamily housing (Section
2 65858).

3 (m) Prohibiting discrimination against affordable housing
4 (Section 65008).

5 (n) California Fair Employment and Housing Act (Part 2.8
6 commencing with Section 12900) of Division 3).

7 (o) Community redevelopment law (Part 1 (commencing with
8 Section 33000) of Division 24 of the Health and Safety Code, and
9 in particular Sections 33334.2 and 33413).

10 (p) *Streamlining housing approvals during a housing shortage*
11 *(Section 65913.4).*

12 (q) *Housing sustainability districts (Chapter 11 (commencing*
13 *with Section 66200)).*

14 SEC. 3. Section 65913.4 is added to the Government Code, to
15 read:

16 65913.4. (a) A development proponent may submit an
17 application for a development that is subject to the streamlined,
18 ministerial approval process provided by subdivision (b) and not
19 subject to a conditional use permit if the development satisfies all
20 of the following objective planning standards:

21 (1) The development is a multifamily housing development that
22 contains two or more residential units.

23 (2) The development is located on a site that satisfies ~~both~~ *all*
24 of the following:

25 ~~(A) Is an urban infill site as defined by Section 21061.3 of the~~
26 ~~Public Resources Code.~~

27 (A) *A site that is a legal parcel or parcels located in a city if,*
28 *and only if, the city boundaries include some portion of either an*
29 *urbanized area or urban cluster, as designated by the United States*
30 *Census Bureau, or, for unincorporated areas, a legal parcel or*
31 *parcels wholly within the boundaries of an urbanized area or*
32 *urban cluster, as designated by the United States Census Bureau.*

33 (B) *A site in which at least 75 percent of the perimeter of the*
34 *site adjoins parcels that are developed with urban uses. For the*
35 *purposes of this section, parcels that are only separated by a street*
36 *or highway shall be considered to be adjoined.*

37 ~~(B) Is a~~

38 (C) *A site that is zoned for residential use or residential*
39 *mixed-use development with at least two-thirds of the square*
40 *footage designated for residential use.*

1 (3) If the development contains units that are subsidized, the
2 development proponent already has recorded, or is required by
3 law to record, a land use restriction for the following applicable
4 minimum durations:

5 (A) Fifty-five years for units that are rented.

6 (B) Forty-five years for units that are owned.

7 (4) ~~The development, excluding any additional density or any~~
8 ~~other concessions, incentives, or waivers of development standards~~
9 ~~granted pursuant to the Density Bonus Law in Section 65915,~~
10 ~~development~~ satisfies both of the following:

11 (A) Is located in a locality that the ~~Department of Housing and~~
12 ~~Community Development~~ *department* has determined is eligible
13 ~~under~~ *subject to* this subparagraph on the basis that the number of
14 units that have been issued building permits is less than the
15 locality's share of the regional housing needs, by income category,
16 for that reporting period. A locality shall remain eligible under
17 this subparagraph for four years after the date that the department
18 ~~determined the locality was eligible, and, at that date, the~~
19 ~~department shall determine, based on the last production report~~
20 ~~submitted by the locality, whether the locality is eligible for another~~
21 ~~four-year period on the basis described above. until the~~
22 ~~department's determination for the next reporting period.~~ A
23 locality shall be ~~deemed to be eligible under~~ *subject to* this
24 subparagraph if it has not submitted an annual housing element
25 report to the ~~Department of Housing and Community Development~~
26 ~~department~~ pursuant to paragraph (2) of subdivision (a) of Section
27 65400 for at least two consecutive years before the development
28 submitted an application for approval under this section.

29 (B) The development is subject to a requirement mandating a
30 minimum percentage of below market rate housing based on either
31 of the following:

32 (i) The locality did not submit its latest production report to the
33 ~~Department of Housing and Community Development~~ *department*
34 by the time period required by Section 65400, or that production
35 report reflects that there were fewer units of above
36 moderate-income housing approved than were required for the
37 regional housing needs assessment cycle for that reporting period.
38 In addition, if the project contains more than 10 units of housing,
39 the project seeking approval dedicates a minimum of 10 percent
40 of the total number of units to housing affordable to households

1 making below 80 percent of the area median income, including at
2 least 5 percent of the total number of units affordable to households
3 making below 50 percent of the area median income. *income*. If
4 the locality has adopted a local ordinance that requires that greater
5 than 10 percent of the units be dedicated to housing affordable to
6 households making below 80 percent of the area median income,
7 that zoning ordinance applies.

8 (ii) The locality did not submit its latest production report to
9 the ~~Department of Housing and Community Development~~
10 *department* by the time period required by Section 65400, or that
11 production report reflects that there were fewer units of housing
12 affordable to households making below 80 percent of the area
13 median income that were issued building permits than were
14 required for the regional housing needs assessment cycle for that
15 reporting period, and the project seeking approval dedicates 50
16 percent of the total number of units to housing affordable to
17 households making below 80 percent of the area median income,
18 unless the locality has adopted a local ordinance that requires that
19 greater than 50 percent of the units be dedicated to housing
20 affordable to households making below 80 percent of the area
21 median income, in which case that ordinance applies.

22 (5) ~~The development~~ *development, excluding any additional*
23 *density or any other concessions, incentives, or waivers of*
24 *development standards granted pursuant to the Density Bonus*
25 *Law in Section 65915, is consistent with objective zoning*
26 *standards, including the Density Bonus Law in Section 65915,*
27 *standards and objective design review standards in effect at the*
28 *time that the development is submitted to the local government*
29 *pursuant to this section. For purposes of this paragraph, “objective*
30 *zoning standards” and “objective design review standards” mean*
31 *standards that involve no personal or subjective judgment by a*
32 *public official; official and are uniformly verifiable by reference*
33 *to an external and uniform benchmark or criterion available and*
34 *knowable by both the development applicant or proponent and the*
35 *public official prior to submittal. These standards may be embodied*
36 *in alternative objective land use specifications adopted by a city*
37 *or county, and may include, but are not limited to, housing overlay*
38 *zones, specific plans, inclusionary zoning ordinances, and density*
39 *bonus ordinances.*

1 (6) The development is not located on a site that is any of the
2 following:

3 (A) A coastal zone, as defined in Division 20 (commencing
4 with Section 30000) of the Public Resources Code.

5 (B) Either prime farmland or farmland of statewide importance,
6 as defined pursuant to United States Department of Agriculture
7 land inventory and monitoring criteria, as modified for California,
8 and designated on the maps prepared by the Farmland Mapping
9 and Monitoring Program of the Department of Conservation, or
10 land zoned or designated for agricultural protection or preservation
11 by a local ballot measure that was approved by the voters of that
12 jurisdiction.

13 (C) Wetlands, as defined in the United States Fish and Wildlife
14 Service Manual, Part 660 FW 2 (June 21, 1993).

15 (D) Within a very high fire hazard severity zone, as determined
16 by the Department of Forestry and Fire Protection pursuant to
17 Section 51178, or within a high or very high fire hazard severity
18 zone as indicated on maps adopted by the Department of Forestry
19 and Fire Protection pursuant to Section 4202 of the Public
20 Resources Code. This subparagraph does not apply to sites
21 excluded from the specified hazard zones by a local agency,
22 pursuant to subdivision (b) of Section 51179, or sites that have
23 adopted sufficient fire hazard mitigation measures as may be
24 determined by their local agency with land use authority.

25 (E) A hazardous waste site that is listed pursuant to Section
26 65962.5 or a hazardous waste site designated by the Department
27 of Toxic Substances Control pursuant to Section 25356 of the
28 Health and Safety Code, unless the Department of Toxic
29 Substances Control has cleared the site for residential use or
30 residential mixed uses.

31 (F) Within a delineated earthquake fault zone as determined by
32 the State Geologist in any official maps published by the State
33 Geologist, unless the development complies with applicable seismic
34 protection building code standards adopted by the California
35 Building Standards Commission under the California Building
36 Standards Law (Part 2.5 (commencing with Section 18901) of
37 Division 13 of the Health and Safety Code), and by any local
38 building department under Chapter 12.2 (commencing with Section
39 8875) of Division 1 of Title 2.

1 (G) Within a flood plain as determined by maps promulgated
2 by the Federal Emergency Management Agency, unless the
3 development has been issued a flood plain development permit
4 pursuant to Part 59 (commencing with Section 59.1) and Part 60
5 (commencing with Section 60.1) of Subchapter B of Chapter I of
6 Title 44 of the Code of Federal Regulations.

7 (H) Within a floodway as determined by maps promulgated by
8 the Federal Emergency Management Agency, unless the
9 development has received a no-rise certification in accordance
10 with Section 60.3(d)(3) of Title 44 of the Code of Federal
11 Regulations.

12 (I) Lands identified for conservation in an adopted natural
13 community conservation plan pursuant to the Natural Community
14 Conservation Planning Act (Chapter 10 (commencing with Section
15 2800) of Division 3 of the Fish and Game Code), habitat
16 conservation plan pursuant to the federal Endangered Species Act
17 of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural
18 resource protection plan.

19 ~~Occupied habitat~~ *Habitat* for protected species identified as
20 candidate, sensitive, or species of special status by state or federal
21 agencies, fully protected species, or species protected by the federal
22 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.),
23 the California Endangered Species Act (Chapter 1.5 (commencing
24 with Section 2050) of Division 3 of the Fish and Game Code), or
25 the Native Plant Protection Act (Chapter 10 (commencing with
26 Section 1900) of Division 2 of the Fish and Game Code).

27 (K) Lands under conservation easement.

28 (7) The development is not located on a site where any of the
29 following apply:

30 (A) The development would require the demolition of ~~housing~~
31 *the following types of housing*:

32 (i) *Housing* that is subject to a recorded covenant, ordinance,
33 or law that restricts rents to levels affordable to persons and
34 families of moderate, low, or very low ~~income~~, *housing income*.

35 (ii) *Housing* that is subject to any form of rent or price control
36 through a public entity's valid exercise of its police ~~power~~, *or*
37 ~~housing power~~.

38 (iii) *Housing* that has been occupied by tenants within the past
39 10 years.

1 (B) The site was previously used for housing that was occupied
2 by tenants that was demolished within 10 years before the
3 development proponent submits an application under this section.

4 (C) The development would require the demolition of a historic
5 structure that was placed on a national, state, or local historic
6 register.

7 ~~(8) The development proponent has certified that one of the~~
8 ~~following is true:~~

9 (D) *The property contains housing units that are occupied by*
10 *tenants, and units at the property are, or were, subsequently offered*
11 *for sale to the general public by the subdivider or subsequent*
12 *owner of the property.*

13 (8) *The development proponent has done both of the following,*
14 *as applicable:*

15 ~~(A)~~

16 (A) *Certified to the locality that either of the following is true,*
17 *as applicable:*

18 (i) ~~The project~~ *entirety of the development is a public work for*
19 *purposes of Chapter 1 (commencing with Section 1720) of Part 7*
20 *of Division 2 of the Labor Code.*

21 ~~(B)~~

22 (ii) ~~If the project development~~ *is not in its entirety a public work,*
23 *that all construction workers employed in the execution of the*
24 ~~project development~~ *will be paid at least the general prevailing*
25 *rate of per diem wages for the type of work and geographic area,*
26 *as determined by the Director of Industrial Relations pursuant to*
27 ~~Sections 1773 and 1773.9 of the Labor Code. Code, except that~~
28 *apprentices registered in programs approved by the Chief of the*
29 *Division of Apprenticeship Standards may be paid at least the*
30 *applicable apprentice prevailing rate. If the development is subject*
31 *to this subparagraph, then for those portions of the development*
32 *that are not a public work all of the following shall apply:*

33 ~~(i)~~

34 (I) *The development proponent shall ensure that the prevailing*
35 *wage requirement is included in all contracts for the performance*
36 *of the work.*

37 ~~(ii) Contractors and~~

38 (II) *All contractors and subcontractors shall pay to all*
39 *construction workers employed in the execution of the work at*
40 *least the general prevailing rate of per diem wages, except*

1 *that apprentices registered in programs approved by the Chief of*
2 *the Division of Apprenticeship Standards may be paid at least the*
3 *applicable apprentice prevailing rate.*

4 *(III) Except as provided in subclause (V), all contractors and*
5 *subcontractors shall maintain and verify payroll records pursuant*
6 *to Section 1776 of the Labor Code and make those records*
7 *available for inspection and copying as provided in therein.*

8 ~~(iii)~~

9 *(IV) Except as provided in ~~clause (iv)~~, subclause (V), the*
10 *obligation of the contractors and subcontractors to pay prevailing*
11 *wages may be enforced by the Labor Commissioner through the*
12 *issuance of a civil wage and penalty assessment pursuant to Section*
13 *1741 of the Labor Code, which may be reviewed pursuant to*
14 *Section 1742 of the Labor Code, within 18 months after the*
15 *completion of the ~~project, or development~~, by an underpaid worker*
16 *through an administrative complaint or ~~civil action~~. ~~action~~, or by*
17 *a joint labor-management committee through a civil action under*
18 *Section 1771.2 of the Labor Code. If a civil wage and penalty*
19 *assessment is issued, the contractor, subcontractor, and surety on*
20 *a bond or bonds issued to secure the payment of wages covered*
21 *by the assessment shall be liable for liquidated damages pursuant*
22 *to Section 1742.1 of the Labor Code.*

23 ~~(iv) Clause (iii)~~

24 *(V) Subclauses (III) and (IV) shall not apply if all contractors*
25 *and subcontractors performing work on the ~~project development~~*
26 *are subject to a project labor agreement that requires the payment*
27 *of prevailing wages to all construction workers employed in the*
28 *execution of the ~~project development~~ and provides for enforcement*
29 *of that obligation through an arbitration procedure. For purposes*
30 *of this clause, “project labor agreement” has the same meaning as*
31 *set forth in paragraph (1) of subdivision (b) of Section 2500 of the*
32 *Public Contract Code.*

33 ~~(v)~~

34 *(VI) Notwithstanding subdivision (c) of Section 1773.1 of the*
35 *Labor Code, the requirement that employer payments not reduce*
36 *the obligation to pay the hourly straight time or overtime wages*
37 *found to be prevailing shall not apply if otherwise provided in a*
38 *bona fide collective bargaining agreement covering the worker.*
39 ~~The requirements of paragraph (2) of subdivision (c) of Section~~
40 ~~1773.1 of the Labor Code do~~ *requirement to pay at least the*

1 *general prevailing rate of per diem wages does not preclude use*
 2 *of an alternative workweek schedule adopted pursuant to Section*
 3 *511 or 514 of the Labor Code.*

4 ~~(C)~~

5 ~~(B) (i) For developments that are not 100 percent subsidized~~
 6 ~~affordable housing and are larger than _____ units, for which any~~
 7 ~~of the following conditions apply, certified that a skilled and trained~~
 8 ~~workforce shall be used to complete the project. For development~~
 9 ~~if the application is approved:~~

10 ~~(I) On and after January 1, 2018, until December 31, 2021, the~~
 11 ~~development consists of 75 or more units that are not 100 percent~~
 12 ~~subsidized affordable housing and will be located within a~~
 13 ~~jurisdiction located in a coastal or bay county with a population~~
 14 ~~of 225,000 or more.~~

15 ~~(II) On and after January 1, 2022, until December 31, 2025,~~
 16 ~~the development consists of 50 or more units that are not 100~~
 17 ~~percent subsidized affordable housing and will be located within~~
 18 ~~a jurisdiction located in a coastal or bay county with a population~~
 19 ~~of 225,000 or more.~~

20 ~~(III) On and after January 1, 2018, until December 31, 2019,~~
 21 ~~the development consists of 75 or more units that are not 100~~
 22 ~~percent subsidized affordable housing and will be located within~~
 23 ~~a jurisdiction with a population of fewer than 550,000 and that is~~
 24 ~~not located in a coastal or bay county.~~

25 ~~(IV) On and after January 1, 2020, until December 31, 2021,~~
 26 ~~the development consists of more than 50 units and will be located~~
 27 ~~within a jurisdiction with a population of fewer than 550,000 and~~
 28 ~~that is not located in a coastal or bay county.~~

29 ~~(V) On and after January 1, 2022, until December 31, 2025,~~
 30 ~~the development consists of more than 25 units and will be located~~
 31 ~~within a jurisdiction with a population of fewer than 550,000 and~~
 32 ~~that is not located in a coastal bay county.~~

33 ~~(ii) For purposes of this subparagraph, section, “skilled and~~
 34 ~~trained workforce” has the same meaning as provided in~~
 35 ~~subdivision (d) of Section 2601 of the Public Contract Code.~~
 36 ~~Chapter 2.9 (commencing with Section 2600) of Part 1 of Division~~
 37 ~~2 of the Public Contract Code.~~

38 ~~(iii) If the development proponent has certified that a skilled~~
 39 ~~and trained workforce will be used to complete the development~~
 40 ~~and the application is approved, the following shall apply:~~

1 (I) The applicant shall require in all contracts for the
2 performance of work that every contractor and subcontractor at
3 every tier will individually use a skilled and trained workforce to
4 complete the development.

5 (II) Every contractor and subcontractor shall use a skilled and
6 trained workforce to complete the development.

7 (III) Except as provided in subclause (IV), the applicant shall
8 provide to the locality, on a monthly basis while the development
9 or contract is being performed, a report demonstrating compliance
10 with Chapter 2.9 (commencing with Section 2600) of Part 1 of
11 Division 2 of the Public Contract Code. A monthly report provided
12 to the locality pursuant to this subclause shall be a public record
13 under the California Public Records Act (Chapter 3.5 (commencing
14 with Section 6250) of Division 7 of Title 1) and shall be open to
15 public inspection. An applicant that fails to provide a monthly
16 report demonstrating compliance with Chapter 2.9 (commencing
17 with Section 2600) of Part 1 of Division 2 of the Public Contract
18 Code shall be subject to a civil penalty of ten thousand dollars
19 (\$10,000) per month for each month for which the report has not
20 been provided. Any contractor or subcontractor that fails to use
21 a skilled and trained workforce shall be subject to a civil penalty
22 of two hundred dollars (\$200) per day for each worker employed
23 in contravention of the skilled and trained workforce requirement.
24 Penalties may be assessed by the Labor Commissioner within 18
25 months of completion of the development using the same
26 procedures for issuance of civil wage and penalty assessments
27 pursuant to Section 1741 of the Labor Code, and may be reviewed
28 pursuant to the same procedures in Section 1742 of the Labor
29 Code. Penalties shall be paid to the State Public Works
30 Enforcement Fund.

31 (IV) Subclause (III) shall not apply if all contractors and
32 subcontractors performing work on the development are subject
33 to a project labor agreement that requires compliance with the
34 skilled and trained workforce requirement and provides for
35 enforcement of that obligation through an arbitration procedure.
36 For purposes of this subparagraph, “project labor agreement”
37 has the same meaning as set forth in paragraph (1) of subdivision
38 (b) of Section 2500 of the Public Contract Code.

39 (C) Notwithstanding subparagraphs (A) and (B), a development
40 that is subject to approval pursuant to this section is exempt from

1 any requirement to pay prevailing wages or use a skilled and
2 trained workforce if it meets both of the following:

3 (i) The project includes 10 or fewer units.

4 (ii) The project is not a public work for purposes of Chapter 1
5 (commencing with Section 1720) of Part 7 of Division 2 of the
6 Labor Code.

7 (9) The development did not or does not involve a subdivision
8 of a parcel that is, or, notwithstanding this section, would otherwise
9 be, subject to the Subdivision Map Act (Division 2 (commencing
10 with Section 66410)) or any other applicable law authorizing the
11 subdivision of land, unless either of the following apply:

12 (A) The development has received or will receive financing or
13 funding by means of a low-income housing tax credit and is subject
14 to the requirement that prevailing wages be paid pursuant to
15 subparagraph (A) of paragraph (8).

16 (B) The development is subject to the requirement that prevailing
17 wages be paid, and a skilled and trained workforce used, pursuant
18 to paragraph (8).

19 ~~(9)~~

20 (10) The development shall not be upon an existing parcel of
21 land or site that is governed under the Mobilehome Residency Law
22 (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2
23 of Division 2 of the Civil Code), the Recreational Vehicle Park
24 Occupancy Law (Chapter 2.6 (commencing with Section 799.20)
25 of Title 2 of Part 2 of Division 2 of the Civil Code), the
26 Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)
27 of Division 13 of the Health and Safety Code), or the Special
28 Occupancy Parks Act (Part 2.3 (commencing with Section 18860)
29 of Division 13 of the Health and Safety Code).

30 (b) (1) If a local government determines that a development
31 submitted pursuant to this section is in conflict with any of the
32 objective planning standards specified in subdivision (a), it shall
33 provide the development proponent written documentation of
34 which standard or standards the development conflicts with, and
35 an explanation for the reason or reasons the development conflicts
36 with that standard or standards, as follows:

37 (A) Within 60 days of submittal of the development to the local
38 government pursuant to this section if the development contains
39 150 or fewer housing units.

1 (B) Within 90 days of submittal of the development to the local
2 government pursuant to this section if the development contains
3 more than 150 housing units.

4 (2) If the local government fails to provide the required
5 documentation pursuant to paragraph (1), the development shall
6 be deemed to satisfy the objective planning standards specified in
7 subdivision (a).

8 (c) Any design review or public oversight of the development
9 may be conducted by the local government's planning commission
10 or any equivalent board or commission responsible for review and
11 approval of development projects, or the city council or board of
12 supervisors, as appropriate. That design review or public oversight
13 shall be objective and be strictly focused on assessing compliance
14 with criteria required for streamlined projects, as well as any
15 reasonable objective design standards published and adopted by
16 ordinance or resolution by a local jurisdiction before submission
17 of a development application, and shall be broadly applicable to
18 development within the jurisdiction. That design review or public
19 oversight shall be completed as follows and shall not in any way
20 inhibit, chill, or preclude the ministerial approval provided by this
21 section or its effect, as applicable:

22 (1) Within 90 days of submittal of the development to the local
23 government pursuant to this section if the development contains
24 150 or fewer housing units.

25 (2) Within 180 days of submittal of the development to the local
26 government pursuant to this section if the development contains
27 more than 150 housing units.

28 (d) (1) Notwithstanding any other law, a local government,
29 whether or not it has adopted an ordinance governing parking
30 requirements in multifamily developments, shall not impose
31 parking standards for a streamlined development that was approved
32 pursuant to this section in any of the following instances:

33 (A) The development is located within one-half mile of public
34 transit.

35 (B) The development is located within an architecturally and
36 historically significant historic district.

37 (C) When on-street parking permits are required but not offered
38 to the occupants of the development.

39 (D) When there is a car share vehicle located within one block
40 of the development.

1 (2) If the development does not fall within any of the categories
2 described in paragraph (1), the local government shall not impose
3 parking requirements for streamlined developments approved
4 pursuant to this section that exceed one parking space per unit.

5 (e) (1) If a local government approves a development pursuant
6 to this section, then, notwithstanding any other law, that approval
7 shall not expire if the project includes public investment in housing
8 affordability, beyond tax credits, where 50 percent of the units are
9 affordable to households making below 80 percent of the area
10 median income.

11 (2) If a local government approves a development pursuant to
12 this section and the project does not include 50 percent of the units
13 affordable to households making below 80 percent of the area
14 median income, that approval shall automatically expire after three
15 years except that a project may receive a one-time, one-year
16 extension if the project proponent can provide documentation that
17 there has been significant progress toward getting the development
18 construction ready, such as filing a building permit application.

19 *(3) If a local government approves a development pursuant to*
20 *this section, that approval shall remain valid for three years from*
21 *the date of the final action establishing that approval and shall*
22 *remain valid thereafter for a project so long as vertical*
23 *construction of the development has begun and is in progress.*
24 *Additionally, the development proponent may request, and the*
25 *local government shall have discretion to grant, an additional*
26 *one-year extension to the original three-year period. The local*
27 *government's action and discretion in determining whether to*
28 *grant the foregoing extension shall be limited to considerations*
29 *and process set forth in this section.*

30 (f) A local government shall not adopt any requirement,
31 including, but not limited to, increased fees or inclusionary housing
32 requirements, that applies to a project solely or partially on the
33 basis that the project is eligible to receive ministerial or streamlined
34 approval pursuant to this section.

35 (g) *This section shall not affect a development proponent's*
36 *ability to use any alternative streamlined by right permit processing*
37 *adopted by a local government, including the provisions of*
38 *subdivision (i) of Section 65583.2.*

39 ~~(g)~~

40 (h) For purposes of this section:

1 (1) “Development proponent” means the developer who submits
2 an application for streamlined approval pursuant to this section.

3 (2) *“Completed entitlements” means a housing development*
4 *which has received all the required land use approvals or*
5 *entitlements necessary for the issuance of building permit.*

6 ~~(2)~~

7 (3) “Locality” or “local government” means a city, including a
8 charter city, a county, including a charter county, or a city and
9 county, including a charter city and county.

10 ~~(3)~~

11 (4) “Production report” means the information reported pursuant
12 to subparagraph (D) of paragraph (2) of subdivision (a) of Section
13 65400.

14 ~~(4)~~

15 (5) “Subsidized” means units that are price or rent restricted
16 such that the units are permanently affordable to households
17 meeting the definitions of very low and lower income, as defined
18 in Sections 50079.5 and 50105 of the Health and Safety Code.

19 ~~(5)~~

20 (6) “Reporting period” means either of the following:

21 (A) The first half of the regional housing needs assessment
22 cycle.

23 (B) The last half of the regional housing needs assessment cycle.

24 (7) *“Urban uses” means any current or former residential,*
25 *commercial, public institutional, transit or transportation*
26 *passenger facility, or retail use, or any combination of those uses.*

27 (i) *This Section shall remain in effect only until January 1, 2026,*
28 *and as of that date is repealed.*

29 SEC. 4. The Legislature finds and declares that ensuring access
30 to affordable housing is a matter of statewide concern, and not a
31 municipal affair. Therefore, the changes made by this act are
32 applicable to a charter city, a charter county, and a charter city and
33 county.

34 SEC. 5. Each provision of this measure is a material and
35 integral part of this measure, and the provisions of this measure
36 are not severable. If any provision of this measure or its application
37 is held invalid, this entire measure shall be null and void.

38 SEC. 6. (a) *Section 1.5 of this bill incorporates amendments*
39 *to Section 65400 of the Government Code proposed by both this*
40 *bill and Assembly Bill 879. That section shall only become*

1 *operative if (1) both bills are enacted and become effective on or*
2 *before January 1, 2018, (2) each bill amends Section 65400 of the*
3 *Government Code, and (3) this bill is enacted after Assembly Bill*
4 *879, in which case Section 1 of this bill shall not become operative.*

5 *(b) Section 2.5 of this bill incorporates amendments to Section*
6 *65582.1 of the Government Code proposed by both this bill and*
7 *Assembly Bill 73. That section shall only become operative if (1)*
8 *both bills are enacted and become effective on or before January*
9 *1, 2019, (2) each bill amends Section 65582.1 of the Government*
10 *Code, and (3) this bill is enacted after Assembly Bill 73, in which*
11 *case Section 2 of this bill shall not become operative.*

12 ~~SEC. 6.~~

13 SEC. 7. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 a local agency or school district has the authority to levy service
16 charges, fees, or assessments sufficient to pay for the program or
17 level of service mandated by this act, within the meaning of Section
18 17556 of the Government Code.

O